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10/808,073	03/24/2004	Xinoyun Zhu	200313904-1	5369
22879 7590 04/03/2009 HEWLETT PACKARD COMPANY P O BOX 272400, 3404 E. HARMONY ROAD INTELLECTUAL PROPERTY ADMINISTRATION FORT COLLINS, CO 80527-2400				
EXAMINER				
TANG, KENNETH				
ART UNIT		PAPER NUMBER		
2195				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/808,073

Applicant(s)

ZHU ET AL.

Examiner

KENNETH TANG

Art Unit

2195

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2004 and 30 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/808)
- Paper No(s)/Mail Date 8/30/04
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-23 are presented for examination.

Claim Objections

2. **Claims 9 and 18 are objected to because of the following informalities:**
3. As to claim 9 (line 10), replace “and;” with – and – in order to correct the grammatical error. In other words, the semicolon after the term “and” is improper.
4. As to claim 18 (line 14), insert “and” after – limitations; - to correct the minor grammatical informality.
5. Appropriate correction is required.

Specification

6. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for "computer-readable medium" of claim 10 is required to overcome the objection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 10-17 are directed to a computer-readable medium, which is non-statutory subject matter. Since no specific definition is given in the specification, therefore, the broadest

reasonable interpretation of the plain meaning of the term applies. The broadest reasonable interpretation covers any computer-readable medium configured for with instruction, and thus, can include carrier waves, which are non-statutory subject matter (see MPEP 2106). Therefore, claims 10-17 are found to be non-statutory.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claim 7 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No. 7,146,353 B2 in view of Hill et al. (US 2004/0267897 A1).

9. The following table mapping illustrates the limitations of the Instant Application that are disclosed in the claims of US 7,146,353 B2 (bolded emphasis by Examiner):

Instant Application	US 7,146,353 B2
<p data-bbox="122 228 505 343">1. A processor-based method for allocating resources to a plurality of applications, comprising:</p> <p data-bbox="122 632 477 701">determining available resources of a networked computing system;</p> <p data-bbox="122 929 477 997">determining, for each application, required resources of the application;</p>	<p data-bbox="528 228 902 481">1. A processor-implemented method for allocating resources to a plurality of applications, wherein the resources include a plurality of servers and at least one of the applications uses a tiered arrangement of servers, comprising:</p> <p data-bbox="528 521 891 589">gathering instrumentation data for work requests processed by the applications;</p> <p data-bbox="567 629 850 652"><i>(disclosed in the reference of Hill)</i></p> <p data-bbox="528 754 907 868">determining an associated workload level for work requests processed by the applications;</p> <p data-bbox="528 908 907 1160">determining for each application a first application resource requirement as a function of the workload levels and a service level metric associated with the application; representing each server as a processor-sharing queue having at least one critical resource;</p>

<p>determining an assigned subset of the available resources for each application as a function of the required resources of the application and the available resources, wherein the function reduces communication delays between resources of the subset of the available resources in</p>	<p>determining respective average response times of each of the tiers, each respective average response time being a function of a number servers in the tier, an arrival rate of work requests, and an average utilization rate of the critical resource;</p> <p>determining a total average response time as a sum of the respective average response times of each of the tiers;</p> <p>determining a minimum total number of servers required in each tier for the total average response time of the application to satisfy the service level metric;</p> <p>determining for each application an assigned subset of resources as a function of the first application resource requirement, wherein the function minimizes communication delays between resources, and satisfies a bandwidth capacity requirement of the application; and</p>
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<p>conformance with bandwidth capacity requirements of the application and in conformance with network bandwidth limitations; and</p> <p>associating the applications with the assigned subsets of resources.</p>	<p><i>(reference of Hill teaches the missing limitations)</i></p> <p>automatically reconfiguring the resources consistent with the assigned subset of resources for each application.</p>
<p>7. The method of claim 1, wherein reducing the communications delay between resources comprises solving a mixed-integer</p>	<p>3. The method of claim 1, wherein the step of determining an assigned subset of resources comprises assigning resources to tiers by a function that satisfies the resource requirements associated with each tier and minimizes communication delay between servers.</p> <p>4. The method of claim 3, wherein the function is a mixed-integer programming function.</p>

programming problem.	
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10. As illustrated above, the bolded portions of the claimed Instant Application are disclosed in the corresponding bolded portions of US 7,146,353 B2. US 7,146,353 B2 does not disclose the claimed limitations of and “determining available resources of a networked computing system;” and using said available resources as part of the function that also is “in conformance with network bandwidth limitations”, as illustrated in the unbolded portion under the column representing the Instant Application. However, Hill discloses a processor-based method for allocating resources to a plurality of applications (see Abstract), comprises determining available resources of a networked computing system (lines 7-8 of [0023]); determining, for each application, required resources of the application (lines 9-17 of [0023]); determining an assigned subset of the available resources for each application as a function of the required resources of the application and the available resources, wherein the function reduces communication delays between resources of the subset of the available resources in conformance with bandwidth capacity requirements of the application and in conformance with network bandwidth limitations ([0023], [0207], [0208], [0210], [0067]); and associating the applications with the assigned subsets of resources ([0207], [0208], [0177]). One of ordinary skill in the art would have known to modify the claimed invention of US 7,146,353 B2 such that it would determine available resources of a networked computing system and use said available resources as part of the function that also is in conformance with network bandwidth limitations. The suggestion/motivation for doing so would have been to better manage the resource requirements

of application running across the plurality of resources, to balancing the load between them, to more efficiently conserve bandwidth, thus, improving the overall system ([0017], [0020]).

Therefore, it would have been obvious to one of ordinary skill in the art to combine claim 4 of US 7,146,353 B2 with the reference of Hill to obtain the invention of claim 7 of the Instant Application.

11. Claim 9 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent No. 7,146,353 B2 in view of Hill et al. (US 2004/0267897 A1).

12. The following table mapping illustrates the limitations of the Instant Application that are disclosed in the claims of US 7,146,353 B2 (bolded emphasis by Examiner):

Instant Application	US 7,146,353 B2
9. A system comprising: means for determining available resources of a networked computing system;	10. An apparatus for allocating resources to a plurality of applications, wherein the resources include a plurality of servers and at least one of the applications uses a tiered arrangement of servers, comprising: <i>(disclosed in the reference of Hill)</i>

<p>means for determining required resources for each application of a plurality of applications;</p>	<p>means for gathering instrumentation data for work requests processed by the applications;</p> <p>means for determining an associated workload level for work requests processed by the applications;</p> <p>means for generating for each application a first application resource requirement as a function of the workload levels and a service level metric associated with the application;</p> <p>means for representing each server as a processor-sharing queue having at least one critical resource; means for determining respective average response times of each of the tiers, each respective average response time being a function of a number servers in the tier, an arrival rate of work requests, and an average utilization rate of the critical resource;</p> <p>means for determining a total average</p>
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<p>means for determining an assigned subset of the available resources for each application as a function of the required resources of the application and the available resources, wherein the function reduces communication delays between resources of the subset of the available resources in conformance with bandwidth capacity requirements of the application and in conformance with network bandwidth limitations; and</p> <p>means for associating the applications with the assigned subsets of resources.</p>	<p>response time as a sum of the respective average response times of each of the tiers;</p> <p>means for determining a minimum total number of servers required in each tier for the total average response time of the application to satisfy the service level metric;</p> <p>means for determining for each application an assigned subset of resources as a function of the first application resource requirement, wherein the function minimizes communication delays between resources, and satisfies a bandwidth capacity requirement of the application; and</p> <p><i>(reference of Hill teaches the missing limitations)</i></p> <p>means for automatically reconfiguring the resources consistent with the assigned subset of resources for each application.</p>
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13. As illustrated above, the bolded portions of the claimed Instant Application are disclosed in the corresponding bolded portions of US 7,146,353 B2. US 7,146,353 B2 does not disclose the claimed limitations of and “determining available resources of a networked computing system;”, “determining” the required resources, and using said available resources as part of the function that also is “in conformance with network bandwidth limitations”, as illustrated in the unbolded portion under the column representing the Instant Application. However, Hill discloses a processor-based method for allocating resources to a plurality of applications (see Abstract), comprises determining available resources of a networked computing system (lines 7-8 of [0023]); determining, for each application, required resources of the application (lines 9-17 of [0023]); determining an assigned subset of the available resources for each application as a function of the required resources of the application and the available resources, wherein the function reduces communication delays between resources of the subset of the available resources in conformance with bandwidth capacity requirements of the application and in conformance with network bandwidth limitations ([0023], [0207], [0208], [0210], [0067]); and associating the applications with the assigned subsets of resources ([0207], [0208], [0177]). One of ordinary skill in the art would have known to modify the claimed invention of US 7,146,353 B2 such that it would determine and take into consideration the available resources of the networked computer system, “determining” the required resources, and being in conformance with network bandwidth limitations. The suggestion/motivation for doing so would have been to better manage the resource requirements of application running across the plurality of resources, to balancing the load between them, to more efficiently conserve bandwidth, thus, improving the overall system ([0017], [0020]). Therefore, it would have been obvious to one of ordinary skill

in the art to combine claim 4 of US 7,146,353 B2 with the reference of Hill to obtain the invention of claim 9 of the Instant Application.

14. Claim 16 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 16 of U.S. Patent No. 7,146,353 B2 in view of Hill et al. (US 2004/0267897 A1).

15. The following table mapping illustrates the limitations of the Instant Application that are disclosed in the claims of US 7,146,353 B2 (bolded emphasis by Examiner):

Instant Application	US 7,146,353 B2
10. A computer-readable medium configured with instructions for causing a processor of a data processing arrangement to allocate resources to a plurality of	13. An article of manufacture for allocating resources to a plurality of applications, wherein the resources include a plurality of servers and at least one of the applications uses a tiered arrangement of servers, comprising: a computer-readable medium configured with instructions for causing a processor-based system to perform the steps of, gathering instrumentation data for work

<p>applications, comprising:</p> <p>determining available resources of a networked computing system;</p> <p>determining, for each application, required resources of the application;</p>	<p>requests processed by the applications;</p> <p><i>(disclosed in the reference of Hill)</i></p> <p>determining an associated workload level for work requests processed by the applications;</p> <p>generating for each application a first application resource requirement as a function of the workload levels and a service level metric associated with the application;</p> <p>representing each server as a processor-sharing queue having at least one critical resource;</p> <p>determining respective average response times of each of the tiers, each respective average response time being a function of a number servers in the tier, an arrival rate of work requests, and an average utilization rate of the critical resource;</p>
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<p>determining an assigned subset of the available resources for each application as a function of the required resources of the application and the available resources, wherein the function reduces communication delays between resources of the subset of the available resources in conformance with bandwidth capacity requirements of the application and in conformance with network bandwidth limitations; and</p> <p>associating the applications with the assigned subsets of resources.</p>	<p>determining a total average response time as a sum of the respective average response times of each of the tiers;</p> <p>determining a minimum total number of servers required in each tier for the total average response time of the application to satisfy the service level metric;</p> <p>determining for each application an assigned subset of resources as a function of the first application resource requirement, wherein the function minimizes communication delays between resources, and satisfies a bandwidth capacity requirement of the application; and</p> <p><i>(the reference of Hill teaches the missing limitations)</i></p> <p>automatically reconfiguring the resources consistent with the assigned subset</p>
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<p>16. The computer-readable medium of claim 10, wherein reducing the communications delay between resources comprises solving a mixed-integer programming problem.</p>	<p>of resources for each application.</p> <p>15. The article of manufacture of claim 13, wherein the computer-readable medium is further configured with instructions for causing a processor-based system to, in determining an assigned subset of resources, perform the step of assigning resources to tiers by a function that satisfies the resource requirements associated with each tier and minimizes communication delay between servers.</p> <p>16. The article of manufacture of claim 15, wherein the function is a mixed-integer programming function.</p>
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16. As illustrated above, the bolded portions of the claimed Instant Application are disclosed in the corresponding bolded portions of US 7,146,353 B2. US 7,146,353 B2 does not disclose the claimed limitations of and “determining available resources of a networked computing

system;”, “determining” the required resources, and using said available resources as part of the function that also is “in conformance with network bandwidth limitations”, as illustrated in the unbolded portion under the column representing the Instant Application. However, Hill discloses a processor-based method for allocating resources to a plurality of applications (see Abstract), comprises determining available resources of a networked computing system (lines 7-8 of [0023]); determining, for each application, required resources of the application (lines 9-17 of [0023]); determining an assigned subset of the available resources for each application as a function of the required resources of the application and the available resources, wherein the function reduces communication delays between resources of the subset of the available resources in conformance with bandwidth capacity requirements of the application and in conformance with network bandwidth limitations ([0023], [0207], [0208], [0210], [0067]); and associating the applications with the assigned subsets of resources ([0207], [0208], [0177]). One of ordinary skill in the art would have known to modify the claimed invention of US 7,146,353 B2 such that it would determine and take into consideration the available resources of the networked computer system, “determining” the required resources, and being in conformance with network bandwidth limitations. The suggestion/motivation for doing so would have been to better manage the resource requirements of application running across the plurality of resources, to balancing the load between them, to more efficiently conserve bandwidth, thus, improving the overall system ([0017], [0020]). Therefore, it would have been obvious to one of ordinary skill in the art to combine claim 4 of US 7,146,353 B2 with the reference of Hill to obtain the invention of claim 16 of the Instant Application.

17. Claim 22 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 of U.S. Patent No. 7,146,353 B2 in view of Hill et al. (US 2004/0267897 A1).

18. The following table mapping illustrates the limitations of the Instant Application that are disclosed in the claims of US 7,146,353 B2 (bolded emphasis by Examiner):

Instant Application	US 7,146,353 B2
<p>18. A system, comprising:</p> <p>a plurality of network-coupled processing resources;</p> <p>a plurality of storage resources network-coupled to the processing resources, wherein the processing and storage resources are allocated to a plurality of applications;</p> <p>a computing arrangement configured to, determine, for each application of the plurality of applications, required resources</p>	<p>1. A processor-implemented method for allocating resources to a plurality of applications, wherein the resources include a plurality of servers and at least one of the applications uses a tiered arrangement of servers, comprising:</p> <p>gathering instrumentation data for work requests processed by the applications;</p> <p>determining an associated workload level for work requests processed by the applications;</p> <p>determining for each application a first application resource requirement as a</p>

<p>of the application;</p> <p>determining an assigned subset of the processing and storage resources for each application as a function of the required</p>	<p>function of the workload levels and a service level metric associated with the application; representing each server as a processor-sharing queue having at least one critical resource;</p> <p>determining respective average response times of each of the tiers, each respective average response time being a function of a number servers in the tier, an arrival rate of work requests, and an average utilization rate of the critical resource;</p> <p>determining a total average response time as a sum of the respective average response times of each of the tiers;</p> <p>determining a minimum total number of servers required in each tier for the total average response time of the application to satisfy the service level metric;</p> <p>determining for each application an assigned subset of resources as a function of the first application resource requirement,</p>
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<p>resources of the application and the processing and storage resources, wherein the function reduces communication delays between resources of the subset of the network and processing resources in conformance with bandwidth capacity requirements of the application and in conformance with network bandwidth limitations;</p> <p>associate the applications with the assigned subsets of processing and storage resources.</p>	<p>wherein the function minimizes communication delays between resources, and satisfies a bandwidth capacity requirement of the application; and</p> <p><i>(reference of Hill teaches the missing limitations)</i></p> <p>automatically reconfiguring the resources consistent with the assigned subset of resources for each application.</p> <p>3. The method of claim 1, wherein the step of determining an assigned subset of resources comprises assigning resources to tiers by a function that satisfies the resource requirements associated with each tier and</p>
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<p>22. The system of claim 18, wherein the computing arrangement is configured to reduce the communications delay between resources by solving a mixed-integer programming problem.</p>	<p>minimizes communication delay between servers.</p> <p>4. The method of claim 3, wherein the function is a mixed-integer programming function.</p>
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19. As illustrated above, the bolded portions of the claimed Instant Application are disclosed in the corresponding bolded portions of US 7,146,353 B2. US 7,146,353 B2 does not disclose the claimed limitations of a system consisting of a plurality of storage resources network-coupled to the processing resources, wherein the storage resources are allocated to a plurality of applications, in addition to determining an assigned subset of the storage resources for each application as a function of the required resources of the application and the storage resources, wherein the function reduces communication delays between resources of the subset of the network and processing resources in conformance with network bandwidth limitations. However, Hill discloses a processor-based system and method for allocating resources to a plurality of applications (see Abstract), comprises determining available resources of a networked computing system (lines 7-8 of [0023]); determining, for each application, required resources of the application (lines 9-17 of [0023]); determining an assigned subset of the available resources for each application as a function of the required resources of the application and the available resources, wherein the function reduces communication delays between resources of the subset of the available resources in conformance with bandwidth capacity

requirements of the application and in conformance with network bandwidth limitations ([0023], [0207], [0208], [0210], [0067]); and associating the applications with the assigned subsets of resources ([0207], [0208], [0177]). Hill also teaches wherein the available resources comprise processing resources, networking resources, and storage resources (Fig. 1, items 101, 102, 103, 115, 116, 111). One of ordinary skill in the art would have known to modify the claimed invention of US 7,146,353 B2 such that it would include a system consisting of a plurality of storage resources network-coupled to the processing resources, wherein the storage resources are allocated to a plurality of applications, in addition to determining an assigned subset of the storage resources for each application as a function of the required resources of the application and the storage resources, wherein the function reduces communication delays between resources of the subset of the network and processing resources in conformance with network bandwidth limitations, as taught in Hill. The suggestion/motivation for doing so would have been to provide a system to perform its method, which better manages the resource requirements of applications running across the plurality of resources, balances the load between them, more efficiently conserves bandwidth, and thus, improves the overall system ([0017], [0020]). Therefore, it would have been obvious to one of ordinary skill in the art to combine claim 4 of US 7,146,353 B2 with the reference of Hill to obtain the invention of claim 22 of the Instant Application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

20. Claims 1-4, 9-13, and 18-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Hill et al. (hereinafter Hill) (US 2004/0267897 A1).

21. As to claim 1, Hill teaches a processor-based method for allocating resources to a plurality of applications (see Abstract), comprising:

determining available resources of a networked computing system (lines 7-8 of [0023]);

determining, for each application, required resources of the application (lines 9-17 of [0023]);

determining an assigned subset of the available resources for each application as a function of the required resources of the application and the available resources, wherein the function reduces communication delays between resources of the subset of the available resources in conformance with bandwidth capacity requirements of the application and in conformance with network bandwidth limitations ([0023], [0040], lines 1-5 and 12-16 of [0069], [0207], [0208], [0210], [0067], [0158] and lines 1-10 of [0009]); and

associating the applications with the assigned subsets of resources ([0023], [0040], [0177]).

22. In summary of the above citations, Hill teaches a networking system for allocating a plurality of resources/machines to a plurality of application programs in an optimized manner and reduces communication delay. The system determines resource availability of each of the plurality of machines in the network. The resource requirements of the applications are also collected such that it can be determined which resource or resources of the plurality/set of resources (assigned subset of available resources) gets allocated to the applications in conformance with considering the network capacity and the network bandwidth requirements of each application. Therefore, in view of the broadest reasonable interpretation of the claim language, the reference of Hill teaches the claimed invention of claim 1.

23. As to claim 2, Hill teaches wherein the available resources comprise processing resources, networking resources, and storage resources (Fig. 1, items 101, 102, 103, 115, 116, 111).

24. As to claim 3, Hill teaches wherein the processing resources comprise servers each having at least one processor (lines 3-6 of paragraph [0097]).

25. As to claim 4, Hill teaches wherein the networking resources comprise network switches ([0031] and lines 4-7 of [0156]).

26. As to claim 9, it is rejected for the same reasons as stated in the rejections of claim 1.
27. As to claim 10, it is rejected for the same reasons as stated in the rejections of claim 1. In addition, Hill teaches a computer-readable medium configured with instructions for causing a processor of data processing arrangement to allocate resources to a plurality of applications ([0049]).
28. As to claims 11-13, they are rejected for the same reasons as stated in the rejections of claims 2-4, respectively.
29. As to claim 18, it is rejected for the same reasons as stated in the rejections of claim 1. In addition, Hill teaches a plurality of storage resources as part of the resources being allocated to the plurality of applications and network-coupled to the processing resources (Fig. 1, items 101, 102, 103, 115, 116, 111).
30. As to claim 19, it is rejected for the same reasons as stated in the rejections of claim 3.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

31. Claims 5-6, 14-15, and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill et al. (US 2004/0267897 A1) in view of Varanasi et al. (hereinafter Varanasi) (US 7,443,799 B2).

32. As to claims 5-6, Hill discloses storage resources such as fixed storage 116, removable storage 115, ROM 103, etc., for a computer that is connected to a network with other computers (Fig. 1). However, Hill is explicitly silent in teaching wherein the storage resources comprise a storage area network (SAN), wherein the storage area network includes at least one pair of redundant core switches coupled to storage devices, the core switches coupled to the processing resources via a plurality of edge switches. Varanasi discloses a networking system that can route data such as client/server applications to a plurality of resource devices, wherein the system is well suited to include a topology such as a SAN with at least one pair of redundant core switches 570 coupled to processing device resources 590 via a plurality of edge switches 580 (col. 1, lines 19-41 and 55-67, col. 2, lines 1-7 and 48-53, col. 8, lines 57-67 through col. 9, lines 1-8, Fig. 5). Hill and Varanasi are both analogous art because they both are in the same field of endeavor of a

network communication system that allocates between a plurality of applications and a plurality of resources. One of ordinary skill in the art would have known to modify Hill's network communication system such that it would include a SAN, wherein the storage area network includes at least one pair of redundant core switches coupled to storage devices, the core switches coupled to the processing resources via a plurality of edge switches, as taught in Varanasi's network communication system. By definition, a SAN is an architecture to attach remote computer storage devices to servers in such a way that the devices appear as locally attached to the operating system. Sharing storage usually simplifies storage administration and adds flexibility since cables and storage devices do not have to be physically moved to shift storage from one server to another. Other benefits include the ability to allow servers to boot from the SAN itself. This also allows for a quick and easy replacement of faulty servers, etc. Therefore, it would have been obvious to one of ordinary skill in the art to combine Hill and Varanasi to obtain the invention of claims 5-6.

33. As to claims 14-15, they are rejected for the same reasons as stated in the rejections of claims 5-6, respectively.

34. As to claims 20-21, they are rejected for the same reasons as stated in the rejections of claims 5-6, respectively.

35. Claims 7-8, 16-17, and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hill et al. (US 2004/0267897 A1) in view of Das et al. (hereinafter Das) (US 2005/0172291 A1).

36. As to claim 7, Hill is silent wherein reducing the communications delay between resources comprises solving a mixed-integer programming problem. However, Das teaches a dynamic resource allocation system that allocates resources amongst a plurality of application entities such that mixed-integer programming is used for optimization (Abstract, lines 5-21 of [0028]). One of ordinary skill in the art would have known to modify Hill's resource allocation system such that it would include mixed-integer programming, as taught in Das's resource allocation system. The suggestion/motivation for doing so would have been to provide the predicted result of a dynamic, rapid, and optimal resource allocation in an automated fashion ([0002], [0005], and lines 5-21 of [0028]). Therefore, it would have been obvious to one of ordinary skill in the art to combine Hill and Das to obtain the invention of claim 7.

37. As to claim 8, Hill ([0031], [0207], [0208], [0210], [0067]) in view of Das (Abstract, lines 5-21 of [0028]) teaches wherein the available resources include network switches coupled with the available resources, and the mixed-integer programming problem reduces communication delays between resources of the subset of the available resources by reducing data traffic on network links that interconnect the network switches.

38. As to claims 16-17, they are rejected for the same reasons as stated in the rejections of claims 7-8, respectively.

39. As to claims 22-23, they are rejected for the same reasons as stated in the rejections of claims 7-8, respectively.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- **Agarwal et al. (US 2003/0028642 A1)** discloses managing server resources for hosted applications using a mixed-integer linear programming model (see Title, Abstract, [0204]-[0206]).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KENNETH TANG whose telephone number is (571)272-3772. The examiner can normally be reached on 8:30AM - 6:00PM, Every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kenneth Tang/
Examiner, Art Unit 2195